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IN THE
Supreme Court of the United States

October Term, 1971
No. 71-1456

**SALYER LAND COMPANY, a California corporation,
C. EVERETTE SALYER; FRED SALYER; LAWRENCE
ELLISON; and HAROLD SHAWL,**

Appellants,

vs.

**TULARE LAKE BASIN WATER STORAGE DISTRICT, a
public district,**

Appellee.

**On Appeal From the United States District Court for
the Eastern District of California.**

MOTION TO AFFIRM.

**Motion of Appellee Tulare Lake Basin Water Storage
District, Pursuant to Rule 16 1.(c), to Affirm the
Judgment From Which an Appeal Has Been Taken.**

Appellants have appealed from that part of the judgment entered March 10, 1972, which denies an injunction restraining the enforcement, operation and execution of Sections 41000 and 41001 of the California Water Storage District Law.¹

¹See Notice of Appeal filed March 14, 1972, which is printed at page 21 of the Jurisdictional Statement of Appellants.

Appellee Tulare Lake Basin Water Storage District moves the Court to affirm the judgment below on the ground that it is manifest that the questions on which the decision of the cause on appeal depends are so unsubstantial as not to need further argument.

Nature of the Case.

The Appellants challenge the constitutionality of those sections of the Water Code of California which limit the right to vote in a general election of a water storage district to holders of title to land, and further, provide that each voter may cast one vote for each one hundred dollars (\$100) worth of land. They assert that such a limitation is contrary to the thrust of the one-man, one-vote decisions of this Court.

On the other hand, it is the Appellee's position that, under California law, a water storage district is a limited-purpose district formed to improve the beneficial use of water. Section 39061 of the Water Code of the State of California describes the nature of a water storage district as:

"The districts formed pursuant to this division are of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the Constitution of the State of California relating to irrigation, reclamation or drainage."

As such, a water storage district is concerned only with the beneficial development of water for agricultural purposes. This is in furtherance of "a compelling state interest." Furthermore, the district does not possess nor exercise any general powers of government as to which, it may be said, all citizens have a direct and primary

interest. Rather, its functions are limited to the development and improvement of the water supply within the district. This is for the benefit of the lands within the district which alone bear the cost of the district's projects. Therefore, it is proper and appropriate that the legislature of the State of California limited the right to vote in district general elections to holders of title to land.

The Statutes Involved on This Appeal.

Sections 41000 and 41001 of the California Water Storage District Law (Water Code, Sections 41000 and 41001) are as follows:

"Section 41000. Qualification. Only the holders of title to land are entitled to vote at a general election."

"Section 41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars (\$100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

The Decision of the Trial Court.

With respect to California Water Code, Section 41000, the trial court said:

"While it is true that the activities of the District affect the economy of the area which is of interest to residents that are not landowners, this is an indirect interest and not a direct, primary and substantial interest that would entitle them to vote. Thus limiting the vote to landowners in this particular water district does not violate plaintiffs'

constitutional rights, and the 'one man, one vote' cases cited by plaintiffs are not controlling in this special purpose district."

With respect to California Water Code, Section 41001, the trial court said:

"Section 41001 providing one vote for each \$100 of assessed valuation is not unconstitutional as the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence."

The Arguments of Appellants Are so Unsubstantial as Not to Need Further Argument.

Appellants seek to avoid the decision of the trial court by citing "one man, one vote" cases of the type determined by the trial court to be not applicable to this case.² Each of these cases involved situations where voters, having a direct and substantial interest in a governmental process, were denied the opportunity to participate. Such denial is clearly unconstitutional. This is not the situation before the Court.

A water storage district limits its activities to the development and improvement of the water supply within the district. It operates through the implementation of a District Project, which in turn can be enacted only by approval of a majority of all of the votes cast and a

²*Stewart v. Parish School Board*, 310 F. Supp. 1172, aff'd, 400 U.S. 884 (1970); *Gray v. Sanders*, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966); *Kramer v. Union Free School District*, 395 U.S. 621; *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Hadley v. Junior College District*, 397 U.S. 50 (1970); *Gordon v. Lance*, 403 U.S. 1 (1971).

majority of the qualified voters voting at a special election to approve a District Project (California Water Code, Section 42355). Furthermore, a district project must be approved as to economic feasibility by the District Securities Commission of the State of California (California Water Code, Section 42500 (E)). The cost of any district project is borne by the lands within the district assessed upon the basis of benefits conferred in the land as determined by an outside board of assessment commissioners (California Water Code, Section 46150, 46175 (E)).

Therefore, it can readily be seen why the trial court determined that the district “. . . performs no governmental function of general concern to the populace and provides no service to the general public such as found by the Court in *Burrey v. Embarcadero Municipal Improvement District* [5 Cal.3d 671] recently decided by the Supreme Court of California.”

The Trial Court further stated: “The State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the district would have been formed unless the persons paying the expenses could control them.”

This reasoning is similar to that expressed by the California District Court of Appeal in *Schindler v. Palo Verde Irrigation District*, 1 Cal.App.3d 831 (1969), in which the Court upheld the statute creating the Palo Verde Irrigation District in which voting rights were apportioned among landowners in proportion to the value of their land. In that case, the Court said:

“The state clearly has a compelling interest in the reclamation of waste lands through flood pro-

tection, drainage and irrigation works. (See *People v. Sacramento Drainage Dist.*, 155 Cal. 373, 379-381 [103 P. 207].) In many circumstances, such as undoubtedly existed in Palo Verde Valley in 1923, the lands to be reclaimed are virtually uninhabited. The grant of election franchise to land owners, resident and non-resident, corporate and individual, is necessary to 'further a compelling state interest.' Absent the voting qualification provided by the Act, it is doubtful that the District could have been formed or functioned. The activities of the District no doubt affect the economy of the area and to that extent District affairs may be of interest to all inhabitants irrespective of land ownership, but such general interest, standing alone, cannot be said to constitute, as a matter of law, a direct, primary and substantial interest entitling all inhabitants to vote. Such general economic interest is indirect, not primary and substantial. (See *Atchison etc. Ry. Co. v. Kings County Water Dist.*, 47 Cal.2d 140, 144-145 [302 P.2d 1].)

"Since the benefits and burdens accrue to each landowner in proportion to the extent of land owned, the grant of franchise in proportion to the assessed value of land ownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District. We conclude that the existing method of allocating voting rights among land owners satisfies the constitutional standards prescribed by *Kramer*."

Another recent state court decision which held that the one-man, one-vote rule did not apply to limited-

purpose districts is that of the Supreme Court of Wyoming in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, Wyo., 490 P.2d 1069 (1971). That case involved a limited-purpose district in which a landowner was entitled to one vote for each acre of land owned by him. The Court upheld the constitutionality of that statute analogizing it to a corporation where a shareholder casts as many votes as he owns shares.

Appellants suggest that decisions such as the foregoing are judicial aberrations created by judges who do not understand the meaning of a republican form of government, but instead, prefer the comforts of an oligarchy. We are even told that Mr. James Madison might feel uncomfortable in the company of such autocrats. This rhetoric not only overlooks the fact that Madison espoused an electoral system where only freeholders could vote in all elections, but totally disregards the fact that this Court has always recognized the sovereign power of the State to seek to further a compelling State interest in a variety of ways.

In the case at bar, the State of California was able to accomplish the objective of having a large and uninhabited area of land, subject to devastating cycles of flooding and drought, reclaimed and brought into production through the instrumentality of the Tulare Lake Basin Water Storage District, among other entities. By banding together, the landowners were able to undertake three multimillion dollar projects to improve their water supply. They paid for it entirely. There is nothing unconstitutional in such an undertaking. This Court's decision in *Kramer* delineated with care the area in which the states may legislate in this fashion. The case at bar falls well within this protected area.

Granting the landowners the right to vote in a California water storage district general election does not tender any question of any substance to this Court. If the matter were before the Court on a writ of certiorari, it would be denied.

The judgment of the Court below should be affirmed in accordance with Rule 16 1(e).

Dated: May 30, 1972.

Respectfully submitted,

ROBERT M. NEWELL,
ERNEST M. CLARK, JR.,

By ROBERT M. NEWELL,
Attorney for Appellee.

Grading for the bridge over the river is now in progress. The bridge will be a steel truss bridge, 100 feet long, and will be built on concrete piers. The bridge will be built on the old site of the bridge, and will be built on the old site of the bridge.

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